

Fordham International Law Journal

Volume 7, Issue 1

1983

Article 2

Is the International Olympic Committee Amenable to Suit in a United States Court?

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Abstract

In this Note, the question of the IOC's amenability to suit in a United States court will be examined. The inquiry will require a determination of whether the IOC has the legal capacity to be sued under international law, and whether that organization is immune from suit under United States law. Finally, it must be determined whether the issues in *Martin* present a political question and whether policy considerations make it advisable for the court to refrain from hearing the case.

IS THE INTERNATIONAL OLYMPIC COMMITTEE AMENABLE TO SUIT IN A UNITED STATES COURT?

INTRODUCTION

*Martin v. International Olympic Committee*¹ raises significant issues regarding the adjudication of suits against international organizations in United States courts. In *Martin*, the question whether a United States court can hear a suit against the International Olympic Committee² (IOC) is presented. The controversy will be resolved before the United States hosts the 1984 Summer Olympics.³

The IOC, following its tradition, has scheduled the 5,000-meter and 10,000-meter races only for men.⁴ Female runners from 21 nations allege that the failure to hold them for women constitutes sex discrimination in violation of state, federal and international law.⁵ They have filed suit against the IOC, the United States Olympic Committee⁶ (USOC) and the Los Angeles Olympic Organizing Committee⁷ (LAOOC) seeking an injunction that would

1. No. 83-5847 (C.D. Cal. filed Sept. 9, 1983). The suit was filed in Los Angeles Superior Court, and was removed to federal court. *Id.* For a recent development in *Martin*, see *infra* note 163.

2. See *infra* notes 35-46 and accompanying text.

3. The modern Olympic Games were founded in 1896 to encourage world peace and friendship and promote amateur athletics. 14 WORLD BOOK ENCYCLOPEDIA, *Olympic Games*, 566 (1984). They consist of Summer Games and Winter Games, each of which are held in a host city. *Id.* The host city provides the facilities for the events, and is the site for all of the sports. *Id.* The Olympics feature sports that are widely popular, and bring together thousands of the world's outstanding athletes. *Id.* at 571.

This year, 10,000 athletes from 150 nations will compete in Los Angeles, and the Games are expected to generate almost U.S.\$4 billion for the state and local economy. *Eve of a New Olympics*, TIME, Oct. 17, 1983, at 81.

4. N.Y. Times, Aug. 12, 1983, at A16, col. 1.

5. See *infra* notes 20-25 and accompanying text.

6. The USOC is responsible for United States participation in the Games. See *infra* notes 47-57 and accompanying text.

7. The LAOOC was created to organize and finance the Games. See *infra* notes 58-61 and accompanying text.

Ironically, the USOC and the LAOOC had earlier persuaded the IOC to add the women's 3,000-meter race and the women's marathon to the 1984 Summer Olympics. N.Y. Times, Aug. 12, 1983, at A16, col. 1.

Peter Ueberroth, the president of the Los Angeles committee, stated that he was "offended" by the suit, in particular because his organization had fought to include the women's marathon in the 1984 Olympics.

require them to hold these events for women.⁸

In this Note, the question of the IOC's amenability to suit in a United States court will be examined. The inquiry will require a determination of whether the IOC has the legal capacity to be sued under international law,⁹ and whether that organization is immune from suit under United States law.¹⁰ Finally, it must be determined whether the issues in *Martin* present a political question¹¹ and whether policy considerations make it advisable for the court to refrain from hearing the case.¹²

I. THE ISSUES IN MARTIN

A. The Plaintiffs' Arguments

The plaintiffs allege that the California district court has jurisdiction over all of the defendants, including the IOC, because the Games are to be held in California.¹³ Although the IOC and the

"To include the L.A.O.O.C. in this suit is exploitive at best. . . . We have no jurisdiction in this matter, and we have been sympathetic to the goals of women in sports."

Id. at A19, cols. 3-4.

8. Plaintiffs' First Amended Complaint For Injunctive and Declaratory Relief and Petition for Writ of Mandate (Sex Discrimination) at 20, *Martin v. International Olympic Comm.*, No. 83-5847 (C.D. Cal. filed Sept. 9, 1983) [hereinafter cited as Plaintiffs' Complaint]. For a discussion of the failure to schedule the women's 5,000-meter and 10,000-meter races, see *N.Y. Times*, Aug. 12, 1983, at A16, col. 1.

The plaintiffs exhausted their procedural remedies. Prior to filing the suit, they appealed to the IOC to add these events, but the IOC refused. Plaintiffs' Complaint, *supra*, at 13.

9. See *infra* notes 68-85 and accompanying text. Legal capacity is defined as the "right to come into court." BLACK'S LAW DICTIONARY 803 (5th ed. 1979).

10. The executive branch has consistently promised the IOC that it would not interfere with the IOC's operation of the Games. See *infra* notes 91-106 and accompanying text. In addition, the International Organizations Immunities Act, 22 U.S.C. § 288 (1976), provides immunity for some international organizations. See *infra* text accompanying notes 86-90.

11. See *infra* text accompanying notes 119-34. Political questions are nonjusticiable because they require action by the other branches of government, or because there are no satisfactory criteria for judicial determination. *Baker v. Carr*, 369 U.S. 186, 210 (1962). "The nonjusticiability of a political question is primarily a function of the separation of powers." *Id.*

12. See *infra* notes 135-54 and accompanying text.

13. Plaintiffs' Complaint, *supra* note 8, at 3. The plaintiffs state that "[t]he site of the Los Angeles Olympics is within the jurisdiction of this court." *Id.*

The defendants, in addition to the IOC, USOC and LAOOC, include the International Amateur Athletic Federation, which has been granted authority by the IOC to establish the rules and regulations of the various athletic events and recommend events for future Olym-

USOC are based in Switzerland¹⁴ and Colorado,¹⁵ respectively, their contacts with the forum should enable California to assert personal jurisdiction.¹⁶

pics, *id.* at 8-9, and the Los Angeles Coliseum Commission, which maintains the Los Angeles Coliseum. *Id.* at 7.

14. INTERNATIONAL OLYMPIC COMMITTEE CHARTER rule 11 [hereinafter cited as IOC CHARTER]

Although the issue is not raised by the parties, the court must determine whether Swiss law or United States law applies to a suit against a Swiss corporation doing business in the United States.

A federal court applies the choice of law rules of the state in which it sits. *Klaxon Co. v. Stentor Co.*, 313 U.S. 487, 496 (1941). California uses a governmental interest approach to conflict of law questions, supplemented by a comparative impairment approach. *Lettieri v. Equitable Life Assurance Soc'y of United States*, 627 F.2d 930, 932 (9th Cir. 1980).

The first step in the analysis is to determine the applicable law. *See generally Currie, The Constitution and Choice of Law: Governmental Interests and the Judicial Function*, 26 U. CHI. L. REV. 9 (1958). United States law may prohibit holding the 5,000-meter and 10,000-meter events for men only. *See infra* notes 19-34 and accompanying text. If Swiss law also prohibits sex discrimination, no conflict exists between the relevant laws, and the law of the forum state applies. *Lettieri*, 627 F.2d at 933.

If Swiss law and United States law appear to yield different results, there may be a "false conflict." This could occur if the United States is the only state that has an interest in applying its own law, or if Swiss law is not intended to apply outside of Switzerland. *See generally Currie, supra*, at 10 (discussion of false conflicts). If there is a false conflict, the law of the interested state applies, and the comparative impairment analysis applies to "cases posing a true conflict." *Lettieri*, 627 F.2d at 933. It is possible that the facts in *Martin* present a "true conflict." If the court determines that a true conflict exists, the final step in the analysis is to determine which state has a greater interest in applying its law. *Lettieri*, 627 F.2d at 933. Under California law, this is determined by analyzing which state's interest would be most impaired if its law were not applied. *Id.*

15. The USOC is headquartered in Colorado Springs. INTERNAL REV. SERV., CUMULATIVE LIST 1013 (1982).

16. Although it is unclear whether the signing of a contract that is being performed in California would, by itself, make the IOC amenable to that state's long-arm jurisdiction, *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.*, 445 U.S. 907 (1980) (White, J., dissenting), the IOC also solicited bids from Los Angeles, *Eve of a New Olympics*, TIME, Oct. 17, 1983, at 72-81, and the performance of the contract in its entirety will be in California. "It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State." *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957). Here, the subject matter of the contract, the Summer Olympics, will be held in California and run by a California corporation. *See TIME, supra*, at 72-81. It is necessary that the defendant "purposefully avails itself" of the forum, *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); that its conduct is certain to have an affiliation with the forum state, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); and that it can foresee litigation resulting from its connection with the forum state, *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring). The IOC required the LAOOC to demonstrate that Los

The plaintiffs assert that the refusal to hold the 5,000-meter and 10,000-meter events for women is unreasonable and discriminatory,¹⁷ because women participate in these events frequently enough to permit the IOC to offer them as Olympic events.¹⁸ According to the plaintiffs, failure to hold the track events for women violates the Unruh Civil Rights Act¹⁹ and the Civil Rights Act of 1964,²⁰ which allegedly prohibit sex discrimination in athletic competitions.²¹ The alleged discrimination also violates the fifth and fourteenth amendments of the United States Constitution,²² article I, section 7 of the California Constitution,²³ the Amateur Sports Act,²⁴ and various principles of international law.²⁵

Angeles would be a suitable site for the Olympics, *see infra* notes 58-61 and accompanying text, before signing the contract. Since the LAOOC agreed to host the games in Los Angeles, it was clear that the performance of the contract would be in California. In fact, a California site was specifically chosen because it was suitable for the Olympics, and it was intended that the contract would be performed there. *TIME, supra*, at 72-81. Accordingly, the conduct of both the IOC and the USOC was purposeful within the meaning of *Hanson*, 357 U.S. at 253, was foreseeable within the meaning of *Shaffer*, 433 U.S. at 217, and established a sufficient affiliation with the forum under *World-Wide Volkswagen*, 444 U.S. at 297.

17. Plaintiffs' Complaint, *supra* note 8, at 13-14. *See infra* text accompanying notes 18-25.

18. "Plaintiffs have met all applicable requirements for inclusion of the women's 5,000-M.[meter] and 10,000-M.[meter] races." Plaintiffs' Complaint, *supra* note 8, at 13. The applicable requirements that the plaintiffs have allegedly met are that their sport is widely practiced in 25 countries and two continents. IOC CHARTER rule 32. A sport is widely practiced in a country if national championships are held and the athletes participate in international competition. *Id.*

19. Unruh Civil Rights Act, CAL. CIV. CODE § 51 (West 1982). The Act prohibits discrimination in all business establishments on the basis of race, color, creed, sex or national origin. *Id.*

20. Civil Rights Act of 1964, 42 U.S.C. § 2000(a) (1976).

21. Plaintiffs' Complaint, *supra* note 8, at 17.

22. U.S. CONST. amends. V, XIV.

23. CAL. CONST. art. I, § 7. This section guarantees equal protection under law. *Id.*

24. Amateur Sports Act of 1950 §§ 101-114, 36 U.S.C. § 392(a)(6) (Supp. II 1978).

25. Plaintiffs' Complaint, *supra* note 8, at 18-20. The international law documents mentioned include the United Nations Charter, which calls for respect for human rights without regard to race, sex, language or religion, U.N. CHARTER arts. 1(3), 55(c), 56. *See also* Convention on the Political Rights of Women, Mar. 31, 1953, 27 U.S.T. 1909, T.I.A.S. No. 8289, 193 U.N.T.S. 135; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222. G.A. Res. 34/180, 34 GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1979); O.A.S. Doc. 65 rev. 1 (1979); G.A. Res. 2200 Annex, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1968); G.A. Res. 217A(III), U.N. Doc. A/810, at 71 (1948).

B. Defendants' Arguments

The defendants argue that the IOC has the exclusive power to determine which events will be held. The IOC Charter vests in the IOC the sole authority for such decision-making,²⁶ although the IOC may delegate control over technical aspects of the games to international federations.²⁷ Therefore, the other defendants are not responsible for the decision.²⁸

The defendants also assert that the plaintiffs lack standing²⁹ and that the holding of the 5,000-meter and 10,000-meter events exclusively for men does not constitute unlawful sex discrimination.³⁰ In addition, the defendants argue that the statutes cited by the plaintiffs do not allow for injunctive relief,³¹ that no state action is involved,³² and that participation in the Olympics is a privilege, not a right.³³ Finally, the defendants argue that the principles of federalism, abstention and equity jurisprudence dictate that a federal court should not grant the equitable relief sought.³⁴

26. "The IOC is the final authority on all questions concerning the Olympic Games and the Olympic movement." IOC CHARTER rule 23. "The IOC in consultation with the IFs [International Federations] concerned shall decide the events which shall be included in each sport" *Id.* rule 32. See Defendants Los Angeles Coliseum Commission and James F. Hardy's Answer to Plaintiffs' Complaint for Violation of Civil Rights and Injunctive Relief at 13, *Martin v. International Olympic Comm.*, No. 83-5847 (C.D. Cal. filed Sept. 9, 1983) [hereinafter cited as Defendants' Answer].

27. IOC CHARTER rule 23. Technical control includes appointing referees, judges, umpires, timekeepers, inspectors and a jury. *Id.* rule 43.

28. Defendants' Answer, *supra* note 26, at 13. The defendants state that "the IOC Charter speaks for itself." *Id.* See *supra* note 26.

29. Defendants' Answer, *supra* note 26, at 15.

The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues" *Baker v. Carr*, 369 U.S. 186, 204 (1962) [which includes] not only a "distinct and palpable injury" . . . *Warth v. Seldin*, 422 U.S. 490, 501 (1975), but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261 (1977).

Duke Power Co. v. Carolina Env'tl. Study Group, 438 U.S. 59, 72 (1978).

30. Defendants' Answer, *supra* note 26, at 15. Therefore, the defendants allege that "the complaint fails to state a claim against the defendants upon which relief can be sought." *Id.*

31. *Id.* at 16.

32. *Id.* at 15.

33. *Id.*

34. *Id.*

II. *THE INTERNATIONAL OLYMPIC COMMITTEE*

A. *Structure*

The IOC, a Swiss corporation,³⁵ is entrusted with the control and development of the modern Olympic Games.³⁶ The IOC is a corporate body by international law³⁷ possessing juridical status³⁸ and perpetual succession.³⁹

The IOC has supreme authority over the Olympic Games.⁴⁰ Members of the IOC are its representatives in their respective countries; they do not serve as national delegates to the IOC.⁴¹ Instructions from any government or any other organization cannot bind IOC members.⁴² Although the IOC assigns technical control over events to international federations,⁴³ it maintains authority over all questions of a nontechnical nature,⁴⁴ including interpretation of the

35. IOC CHARTER rule 11. Rule 11 of the Charter states:

The IOC was created by the Congress of Paris of 23rd June 1894; it was entrusted with the control and development of the modern Olympic Games;

It is a body corporate by international law having juridical status and perpetual succession. Its headquarters are in Switzerland. It is not formed for profit and has as its aims:

- to encourage the organisation and development of sport and sports competitions;
- to inspire and lead sport within the Olympic ideal, thereby promoting and strengthening friendship between the sportsmen of all countries;
- to ensure the regular celebration of the Olympic Games;
- to make the Olympic Games ever more worthy of their glorious history and of the high ideals which inspired their revival by Baron Pierre de Coubertin and his associates.

Id.

36. *Id.*

37. *Id.*

38. *Id.* The term juridical status is not defined by the Charter. Juridical status means a distinct legal entity, separate from the persons who own it. *Avigliano v. Sumitomo Shoji Am., Inc.*, 473 F. Supp. 506, 509 (S.D.N.Y. 1979).

39. IOC CHARTER rule 11. Perpetual succession is not defined by rule 11. However, the Charter does state that "[t]he IOC is a permanent organisation." *Id.* rule 12.

40. *Id.* rule 23. "The IOC is the final authority on all questions concerning the Olympic Games and the Olympic movement." *Id.*

41. *Id.* rule 12.

42. *Id.* "They may not accept from governments or from any organisations or individuals instructions which shall in any way bind them or interfere with the independence of their vote." *Id.*

43. *Id.* rule 23. See *supra* note 26 and accompanying text.

44. IOC CHARTER rule 16.

rules.⁴⁵ Any decision on whether to hold the 5,000-meter and 10,000-meter races must be approved by the IOC, as it is considered a question of a substantive, nontechnical nature.⁴⁶

B. *Relationship to the USOC and the LAOOC*

The USOC was created by an act of Congress for the purpose of organizing American participation in the Olympics.⁴⁷ The act expressly provides that the USOC has the power to sue and be sued.⁴⁸ The IOC approved the USOC as a national Olympic committee on the condition that the USOC acknowledge the supreme authority of the IOC⁴⁹ and agree to be independent of governmental or political pressure.⁵⁰

The USOC has the power to settle disputes involving American participation in the Olympics,⁵¹ but it must do so in accordance with IOC rules.⁵² A violation of the IOC's rules would subject the USOC to disciplinary sanctions.⁵³ Such sanctions may include an

45. *Id.*

46. The events are governed by the technical rules of the international federation concerned. *Id.* rule 32. However, "[t]he IOC in consultation with the IFs concerned shall decide the events which shall be included in each sport, in bearing with the global aspect of the Olympic programme and statistical data referring to the number of participating countries in each event" *Id.*

47. 36 U.S.C. §§ 371-393 (Supp. II 1978). The corporation has the power to "organize, finance and control the representation of the United States in the competitions and events of the Olympic Games" *Id.* § 375(a)(3)

48. *Id.* § 375(6). The USOC was sued in 1980 for failing to send a team to the 1980 Summer Olympics in Moscow. *DeFrantz v. United States Olympic Comm.*, 492 F. Supp. 1181 (D.D.C. 1980). The court ruled in favor of the USOC, holding, *inter alia*, that participation in the Olympics is not a constitutionally protected right. *Id.* at 1194.

49. "Every person or organisation that plays any part whatsoever in the Olympic movement shall accept the supreme authority of the IOC" IOC CHARTER rule 4. For a discussion of the IOC, see *supra* text accompanying notes 36-46.

50. The USOC "must be autonomous and must resist all pressures of any kind whatsoever, whether of a political, religious or economic nature." *Id.* rule 24.

51. The USOC has "exclusive jurisdiction . . . over all matters pertaining to the participation of the United States in the Olympic Games . . . including the representation of the United States in such games" 36 U.S.C. § 374(3).

52. IOC CHARTER rule 4. The USOC "must guarantee that the Games shall be organised to the satisfaction of and in accordance with the requirements of the IOC." *Id.*

53. *Id.* rule 25. "[T]he NOC [National Olympic Committee] of a country where the Olympic Games are held may have its recognition withdrawn or have penalties imposed on it under this Rule in the event of the OCOG [Organizing Committee of the Olympic Games, in this case the LAOOC] not fulfilling the conditions under which the Olympic Games were allocated." *Id.* An end to recognition would prevent participation by American athletes, as all contestants must belong to a national Olympic committee. *Id.* rule 36.

end to the IOC's recognition of the USOC or the disqualification of American athletes from participation in track events.⁵⁴ The Amateur Sports Act⁵⁵ gives the USOC exclusive jurisdiction over matters pertinent to United States participation and over the organization of the Olympic Games when they are held in the United States.⁵⁶ The Act authorizes the USOC to do all acts necessary and proper for that purpose.⁵⁷

The LAOOC is a California corporation,⁵⁸ functioning in the same way that a host city has in previous Olympics.⁵⁹ The LAOOC contracted, along with the USOC, to operate the games as an agent of the IOC.⁶⁰ Before its bid was accepted, the LAOOC was required to demonstrate that the City of Los Angeles and the government of the United States would abide by the IOC rules and bylaws, and guarantee that no laws, regulations or customs would "limit, restrict or interfere with the Games in any way."⁶¹

III. AMENABILITY TO SUIT UNDER INTERNATIONAL AND DOMESTIC LAW

A. *Legal Personality under International Law*

The IOC may be sued if it is found to have international legal personality (also referred to as legal capacity).⁶² The law in this

54. *Id.* rules 25, 44.

55. 36 U.S.C. §§ 371-393 (Supp. II 1978).

56. 36 U.S.C. § 374(3). Pertinent matters include representing the United States in relations with the IOC, *id.* § 375(a)(2); making contracts, *id.* § 375(a)(7); and financing United States participation, *id.* § 375(a)(3).

57. *Id.* § 375(a)(16).

58. Plaintiffs' Complaint, *supra* note 8, at 6.

59. *Eve of a New Olympics*, TIME, Oct. 17, 1983, at 72-81. This is the first time a corporation, rather than a city, is operating the Olympics. *Id.* at 76, 78. A "host city" would traditionally organize, finance and operate the Games. See *supra* note 3.

60. Plaintiffs' Complaint, *supra* note 8, at 14.

61. IOC CHARTER at 78 (Questionnaire for Candidate Cities Applying for the Games). The LAOOC also had to guarantee that the United States government and the City of Los Angeles would abide by IOC rules. *Id.* The Organizing Committee "shall function by virtue of the powers which shall have been delegated to it within prescribed limits, and it may not usurp the powers and responsibilities of the IOC. . . . It must settle all outstanding questions and disputes concerning the Olympic Games to the satisfaction of the IOC." IOC CHARTER rule 52.

62. For the definition of legal capacity, see *supra* note 9. "Possession of such international personality will normally involve, as a consequence, the attribution of power . . . to

area is unclear, as courts have used different approaches to determine legal personality,⁶³ and have often bypassed the issue altogether.⁶⁴

Two distinct tests have been used to determine whether an international organization has legal personality.⁶⁵ These methods are the inductive approach⁶⁶ and the objective approach.⁶⁷ The inductive approach requires analysis of the organizing documents of the international body to determine the purpose of the organization.⁶⁸ If the organization was formed with attributes of legal personality, such as the power to contract, the power to sue and be sued, and certain privileges and immunities,⁶⁹ the organization satisfies the inductive test.⁷⁰

The objective approach,⁷¹ in contrast, involves a four part test: the organization must be more than simply a center "for harmoniz-

undertake legal proceedings" D. BOWETT, *THE LAW OF INTERNATIONAL INSTITUTIONS* 302 (1975). The analysis deals with organizations created by states. Lashbrooke, *Suits Against International Organizations in Federal Court: OPEC, A Case Study*, Calif. W. Int'l L.J. 305, 306 (1982). The IOC consists of national Olympic committees. IOC CHARTER rule 24. National Olympic committees are created by governments, *see, e.g.*, 36 U.S.C. §§ 371-393 (Supp. II 1978) (Congress creates the USOC), and include all IOC members in their respective countries. IOC CHARTER rule 24.

63. D. BOWETT, *supra* note 62, at 299-304. *See infra* notes 66-75 and accompanying text.

64. In *International Ass'n of Machinists and Aerospace Workers v. OPEC*, 477 F. Supp. 553 (C.D. Cal. 1979), *aff'd on other grounds*, 649 F.2d 1354 (9th Cir.), *cert. denied*, 454 U.S. 1163 (1981), the court did not address the issue, but stated that "OPEC could not be and had not been legally served." *Id.* at 560. *See* Lashbrooke, *supra* note 62, at 305-24, for a discussion of OPEC's legal capacity.

65. D. BOWETT, *supra* note 62, at 299-304; Lashbrooke, *supra* note 62, at 306-12. *See infra* notes 66-75 and accompanying text.

66. Rama-Montaldo, *International Legal Personality and Implied Powers of International Organizations*, 44 BRIT. Y.B. INT'L L. 111, 112 (1970); Lashbrooke, *supra* note 62, at 306.

67. *See* Lashbrooke, *supra* note 62, at 306; Rama-Montaldo, *supra* note 66, at 112.

68. I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 522 (1966). "[I]n the first instance the evidence of legal capacity is to be found in the constituent treaty of the particular organization." *Id.* "Those who adopt this approach generally link it with the foundation of the personality or the will of the states either express or implied." Rama-Montaldo, *supra* note 66, at 112.

69. I. BROWNLIE, *supra* note 68, at 518-22.

70. D. BOWETT, *supra* note 62, at 308-14.

71. The objective approach was set forth by the International Court of Justice in the *Reparations* case. *See Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174, 178-79. *See infra* text accompanying notes 80-85. *See generally* Lashbrooke, *supra* note 62, at 310-12.

ing the actions of nations in the attainment of these common ends";⁷² it must possess an infrastructure;⁷³ it must perform special tasks;⁷⁴ and it must occupy a position "in certain respects in detachment from its members."⁷⁵

The IOC has legal personality under the inductive test,⁷⁶ as it is incorporated under international law, and possesses juridical status.⁷⁷ The IOC Charter allows the IOC to contract with organizations in other nations,⁷⁸ and to assert independence from political and governmental control.⁷⁹

The IOC also satisfies the four elements of the objective test. The IOC is more than simply a center for harmonizing the actions of nations participating in the Olympic Games, as its members have rights and duties within the organization.⁸⁰ It has an infrastructure, consisting of officers,⁸¹ national Olympic committees,⁸² and its own rules and bylaws.⁸³ The committee performs a special task: to promote and govern the Olympics.⁸⁴ Finally, the IOC has a life of its own, as it has perpetual succession,⁸⁵ i.e., it continues to exist although member states may withdraw and new ones may join the organization.

72. *Reparations*, 1949 I.C.J. at 178. The United Nations is more than a center of harmony among nations in that its members have powers and responsibilities within the organization itself. *Id.* A congress of states would not satisfy this criterion. Lashbrooke, *supra* note 62, at 310. This requires that the members "have mutual rights and duties within the organization." Rama-Montaldo, *supra* note 62, at 125 n.2.

73. *Reparations*, 1949 I.C.J. at 178. The United Nations, for example, has organs which constitute an infrastructure. *Id.*

74. *Id.*

75. *Id.* at 178-79.

76. *See supra* notes 68-70 and accompanying text.

77. IOC CHARTER rule 11.

78. *Id.* rule 53.

79. *Id.* rule 12. Members of the IOC are representatives of the IOC in their respective countries. They are not delegates to the IOC. *Id.* For a discussion of the independence of IOC members, see *supra* note 42 and accompanying text.

80. IOC CHARTER rules 14, 15. IOC members have duties within the organization. *Id.*

81. *Id.* rule 14.

82. *Id.* rule 24.

83. *Id.* rule 4.

84. *Id.* rule 1. One of the aims of the IOC is to "bring together the athletes of the world in the great four-yearly sport festival, the Olympic Games." *Id.*

85. *Id.* rule 11. The IOC "is a permanent organisation." *Id.* rule 12.

B. *International Organizations Immunities Act*

The International Organizations Immunities Act (IOIA) provides immunity for "public international organizations"⁸⁶ of which the United States is a member.⁸⁷ The President is directed to determine which international organizations are immune.⁸⁸ The IOC is probably not a public organization because, although it is created by governments, it maintains independence from all governmental control.⁸⁹ Even if the IOIA could apply, the IOC has not been designated by the President as an exempt organization.⁹⁰

C. *Presidential Assurances*

The executive branch has consistently assured the IOC that it would abide by IOC decisions when the Games are held in the United States.⁹¹ Judicial action in *Martin* would be inconsistent

86. International Organizations Immunities Act (IOIA), 22 U.S.C. § 288 (1976).

87. *Id.*

88. *Id.* The other statute that applies to an international body is the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 (1976). The Act grants immunity to foreign states to the extent they engage in noncommercial activity. *Id.* The statute is essentially a codification of the act of state doctrine. See generally Kahale, *Characterizing Nationalization for Purposes of the Foreign Sovereign Immunities Act and the Act of State Doctrine*, 6 FORDHAM INT'L L.J. 391 (1983). The statute does not apply to the IOC, since it is not a state and its actions are not attributable to any government. See *supra* notes 35-46 and accompanying text.

89. The IOIA does not define "public organization," but the legislative history of the IOIA refers to those organizations "that are composed of governments as members." H.R. REP. NO. 1203, 79th Cong., 1st Sess. 1 (1945), reprinted in 1945 U.S. CODE CONG. & AD. NEWS 946. The IOC, though created by member states, see *supra* note 62, maintains independence from governmental control. See *supra* notes 41-42 and accompanying text.

90. See 22 U.S.C. § 288, for a list of the organizations receiving immunity pursuant to executive order.

91. The Justice Department filed a Statement of Interest in *Liang Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, 72 A.D.2d 439, 424 N.Y.S.2d 535, *aff'd* 49 N.Y.2d 771, 403 N.E.2d 178, 426 N.Y.S.2d 473 (1980)[hereinafter cited as Statement of Interest]. In opposing judicial intervention, the Justice Department stated:

The United States has a substantial foreign policy interest in maintaining its ability to host international sporting events such as the Olympic Games in a manner consistent with decisions reached by the international bodies managing those events. In connection with its hosting of the 1980 Olympic Games, the United States has repeatedly committed to the IOC that the United States would be bound by the list of invitees and the conditions of participation set by the IOC. . . . That commitment was based on our "recognition of the private character of the International Olympic Committee and the games."

Statement of Interest, *supra*, app. 3.

with these promises.⁹² The assurances were required by the IOC as part of the agreement with the LAOOC, the USOC and the City of Los Angeles to host the 1984 Games.⁹³ Congress has neither approved nor disapproved such executive action; the Amateur Sports Act, which pertains to Olympic matters, is silent in this regard.⁹⁴

In *Martin*, the Presidential assurances to the IOC were neither based on inherent constitutional power,⁹⁵ nor were they authorized by statute.⁹⁶ However, the President has broad powers in foreign affairs,⁹⁷ and the hosting of the Olympics involves substantial foreign policy considerations.⁹⁸ Therefore, the assurances to the IOC could be based on the President's foreign policy power.

The Statement of Interest was made during the 1980 Games at Lake Placid, *Ren-Guey*, 72 A.D.2d at 441, 424 N.Y.S.2d at 537, two years after the 1984 Summer Olympics had been awarded to Los Angeles by the IOC. Plaintiffs' Complaint, *supra* note 8, at 14. For the Justice Department's view of judicial intervention in the Games, see *infra* note 136.

In addition, the LAOOC had to demonstrate that the City of Los Angeles and the United States would abide by IOC rules. See *supra* note 61 and accompanying text.

92. The IOC has the authority to determine which events will be held. IOC CHARTER rule 32.

93. See *supra* note 61 and accompanying text.

94. 36 U.S.C. §§ 371-393 (Supp. II 1978).

95. This would include the power to recognize foreign governments. See *United States v. Belmont*, 301 U.S. 324, 330 (1937). In *Belmont*, the President recognized the Soviet government for the purpose of settling claims between the United States and the Soviet Union. *Id.* at 326-27. As a result, certain Soviet assets were seized by the United States. *Id.* The Supreme Court held that this action did not require Senate approval, and preempted state laws regarding expropriation. *Id.* at 330. In *United States v. Pink*, 315 U.S. 203 (1942), the Supreme Court held that the Litvinov assignment (an assignment of certain claims accepted by the Soviet government when it was recognized in 1933) gave the President the power to form public policy regarding Soviet nationalization decrees without the consent of the Senate. *Id.* at 229.

96. See *supra* note 94 and accompanying text.

97. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-20 (1936). In *Curtiss-Wright*, the Court formulated the implied powers concept:

It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations . . . congressional legislation . . . must often accord the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved.

Id. See also *infra* note 99 and accompanying text for discussion of the President's foreign policy power.

98. See *supra* note 91 and accompanying text.

When Congress has approved action by a President in the area of foreign affairs such action is presumptively valid.⁹⁹ Congress enacted the Amateur Sports Act¹⁰⁰ with the knowledge that the USOC would be bound by the rules of the IOC.¹⁰¹ It gave the USOC exclusive jurisdiction over the Games when they are held in the United States.¹⁰² It did not give the President the power to grant immunity from suit to the IOC,¹⁰³ and it expressly made the IOC's agent, the USOC, amenable to suit.¹⁰⁴ Thus, it can be argued that

99. *Dames & Moore v. Regan*, 453 U.S. 654, 668-69 (1981).

When the President acts pursuant to an express or implied authorization from Congress, he exercises not only his powers but also those delegated by Congress. In such a case the executive action "would be supported by the strongest of presumptions and the widest latitude of judicial interpretation . . ." [I]n the absence of congressional authorization . . . the validity of the President's action . . . hinges on a consideration of all the circumstances which might shed light on the views of the Legislative Branch toward such action. . . . Finally, when the President acts in contravention of the will of Congress, "his power is at its lowest ebb," and the Court can sustain his actions "only by disabling the Congress from acting on the subject."

Id. at 668-69. (citations omitted) (quoting *Youngstown v. Sawyer*, 343 U.S. 579, 635-38 (1951) (Jackson, J., concurring)).

In *Dames & Moore*, The Supreme Court held that the International Emergency Economic Powers Act of 1977 gave the President the power to transfer Iranian assets out of the United States as part of the hostage settlement. 453 U.S. at 675. In *Youngstown*, the President ordered the seizure of steel to avert a nationwide strike that he thought would hurt national defense. 343 U.S. at 582-83. The Court held that since Congress refused to authorize seizures in the Taft-Hartley Act, 29 U.S.C. §§ 141-197 (1976), the President was acting in opposition to the will of Congress, and the seizure was invalid. 343 U.S. at 586.

The extent of the President's foreign policy power has always been debated. "A judge . . . may be surprised at the poverty of really useful and unambiguous authority applicable to concrete problems of executive power as they actually present themselves." *Youngstown*, 343 U.S. at 634 (Jackson, J., concurring). See generally Lofgren, United States v. Curtiss-Wright Export Corporation: An Historical Reassessment, 83 Yale L.J. 1 (1973); Borchard, *Shall the Executive Agreement Replace the Treaty?*, 53 Yale L.J. 664 (1944).

100. 36 U.S.C. §§ 371-393 (Supp. II 1978).

101. *DeFrantz v. United States Olympic Comm.*, 492 F. Supp. 1181, 1187-88 (D.D.C. 1980). In *DeFrantz*, the court stated:

In writing this legislation, Congress did not create a new relationship between the USOC and the IOC. Rather, it recognized an already long-existing relationship between the two and statutorily legitimized that relationship. . . . Congress was necessarily aware that a National Olympic Committee is a creation and a creature of the International Olympic Committee, to whose rules and regulations it must conform.

Id.

102. 36 U.S.C. § 374(3).

103. See *supra* note 94 and accompanying text.

104. 36 U.S.C. § 375(6).

Congress intended that the Olympics be exclusively under the control of the USOC, which, in turn, is bound by United States law. The reverse, however, may also be asserted; Congress, knowing that the USOC would be bound by IOC rules,¹⁰⁵ gave the USOC control over the events,¹⁰⁶ intending that the IOC's rules would be respected. If this is true, the President's assurances to the IOC, which permitted the IOC to award the 1984 Games to Los Angeles, are consistent with congressional intent. Accordingly, it is not clear, under the facts of *Martin*, whether the federal court is barred from hearing a suit against the IOC.

IV. *JUSTICIABILITY UNDER THE POLITICAL QUESTION DOCTRINE*

Even if the IOC is amenable to suit, the court still must determine whether the facts in *Martin* present a political question.¹⁰⁷ The Supreme Court has set forth the criteria for determining the existence of a political question:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence.¹⁰⁸

105. See *supra* note 101 and accompanying text.

106. See *supra* note 102 and accompanying text.

107. See *supra* note 11 and accompanying text.

108. *Baker v. Carr*, 369 U.S. 186, 217 (1962).

A. Substantive Issues

The substantive issues in *Martin* do not present a political question. Interpretation of sex discrimination laws requires no action by a coordinate branch of government.¹⁰⁹ This case is thus distinguishable from *Liang Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*¹¹⁰ In *Ren-Guey*, a Taiwanese athlete sought an injunction allowing Taiwan to enter the 1980 Winter Olympics with its own flag, uniform and anthem.¹¹¹ The trial court, in ruling for the plaintiff, implicitly decided that Taiwan was an independent state and that the Taiwanese athletes were being discriminated against on the basis of nationality.¹¹² This decision was reversed, in part because the recognition of nations is a matter that belongs to the executive branch.¹¹³

B. Procedural Issues

The procedural aspect of *Martin*—specifically, the assertion of jurisdiction over the IOC—does not present a political question.

109. While the defendants assert that the statutes cited by the plaintiffs do not allow for injunctive relief, Defendants' Answer, *supra* note 26, at 16, whether or not the court does have this power is itself an aspect of statutory interpretation that is committed to the judiciary. See *infra* note 115 and accompanying text.

110. 72 A.D.2d 439, 424 N.Y.S.2d 535, *aff'd*, 49 N.Y.2d 771, 403 N.E.2d 178, 426 N.Y.S.2d 473 (1980).

111. *Id.*

112. *Liang Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, No. 50-80, slip op. at 6-8 (Essex County Ct. Feb. 7, 1980), *rev'd*, 72 A.D.2d 439, 424 N.Y.S.2d 535, *aff'd*, 49 N.Y.2d 771, 403 N.E.2d 178, 426 N.Y.S.2d 473 (1980).

113. *Ren-Guey*, 72 A.D.2d at 441, 424 N.Y.S.2d at 537. In *Ren-Guey*, the Appellate Division stated:

Whether a foreign government should be recognized is a political question that neither the United States Supreme Court nor any other American court may review. . . . In effect, plaintiff asks this court to compel the defendant, as surrogate of the IOC, to recognize a symbol of national sovereignty. . . . Since the Department of State, acting on behalf of the President, has elected to defer to the IOC in matters concerning national representation at the Olympics, the issue involved in this appeal is a political question. . . .

Id. The Court of Appeals affirmed:

In view of the statement of interest submitted by the Attorney General of the United States on behalf of the Department of State pursuant to section 517 of title 28 of the U.S. Code, we are persuaded that the courts of our State must refrain from the exercise of jurisdiction to resolve a dispute which has at its core the international "two-Chinas" problem.

Ren-Guey, 49 N.Y.2d at 773, 403 N.E.2d at 179, 426 N.Y.S.2d at 474.

While the legal capacity of international organizations is unclear,¹¹⁴ the uncertainty of a legal issue does not make it a political question.¹¹⁵ Also, the fact that a suit against an international organization involves foreign affairs does not, by itself, preclude the court from hearing the case.¹¹⁶ While Congress and the President could preempt the courts by granting immunity to the IOC, they have not done so,¹¹⁷ and the fact that they could does not prevent the courts from hearing the case.¹¹⁸

C. Policy Considerations

1. Foreign Affairs

Even if the issues in *Martin* can properly be adjudicated, the political question doctrine may counsel restraint.¹¹⁹ In *Martin*, an

Courts may treat an unrecognized sovereign as a nation for the purpose of being sued. *Wulfsohn v. Russian Rep.*, 234 N.Y. 372 (1923). Recognition, per se, however, is not within a United States court's jurisdiction. *Baker*, 369 U.S. at 212.

114. See *supra* text accompanying notes 63-64.

115. In fact, it is the responsibility of the courts to determine when, and how, such jurisdiction can be obtained. *Baker*, 369 U.S. at 211. "Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation . . ." *Id.*

116. While some issues clearly require an initial policy determination of nonjudicial discretion, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Id.* Therefore, the fact that foreign policy considerations are involved here does not, by itself, make it a political question.

117. The IOC is not immune under the IOIA, see *supra* notes 86-90 and accompanying text, and, though the assurances given to the IOC by the executive branch may be binding, see *supra* notes 91-106, whether they are is itself a question for the judiciary. See *supra* note 115.

118. This is true where action by the other branches of government could be conclusive on the matter, but they have not spoken. "[T]hough a court will not ordinarily inquire whether a treaty has been terminated, since on that question 'governmental action . . . must be regarded as of controlling importance,' if there has been no conclusive 'governmental action' then a court can construe a treaty and may find it provides the answer." *Baker*, 369 U.S. at 212. However, this involvement with foreign policy is a consideration, even if it is not binding. See *infra* notes 119-37 and accompanying text.

119. Policy considerations related to the political question doctrine include "a lack of judicially discoverable and manageable standards for resolving it; . . . or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Baker*, 369 U.S. at 217.

injunction would interfere with the contract between the IOC, USOC and LAOOC,¹²⁰ and thus hinder our foreign policy.¹²¹ Hosting the Olympics and maintaining friendly relations with international organizations in general are important methods of improving standing in the international community.¹²² Judicial intervention may interfere with this goal. If the President's commitments can be dishonored by the courts, the ability of the United States to host international sporting events will be seriously impaired.¹²³

In *Martin*, the court must determine whether the interest in hearing the case outweighs foreign policy considerations.¹²⁴ The American interest in *Martin* may be weak, as only nine of the plaintiffs are United States citizens.¹²⁵ Moreover, if the court hears this case, there would be a violation of the IOC's rules,¹²⁶ which would be grounds for withdrawing recognition of the USOC,¹²⁷ an

120. IOC CHARTER at 78 (Questionnaire for Candidate Cities Applying for the Games). The LAOOC had to guarantee that no "laws, regulations or customs" would "limit, restrict or interfere with the games in any way." *Id.*

121. "It is fundamental to our constitutional scheme that in dealing with other nations the country must speak with a united voice." *Republic of Iraq v. First Nat'l City Bank*, 353 F.2d 47, 50 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027 (1966). In *Republic of Iraq*, Iraq attempted to recover a bank account in New York owned by the late King Faisal II, whose property had been confiscated under Iraqi law. *Id.* at 49-50. Because the case involved an act by a foreign state, the court stated that it would give it affect only if it were consistent with the laws and policies of the United States. *Id.* at 50-51. The court held that it was not, and affirmed the lower court's dismissal. *Id.* at 51. *See also* *International Ass'n of Machinists v. OPEC*, 649 F.2d 1354 (9th Cir.), *cert. denied*, 454 U.S. 1163 (1981). "To participate adeptly in the global community, the United States must speak with one voice and pursue a careful and deliberate foreign policy." *Id.* at 1358.

122. *See, e.g., supra* note 91 and accompanying text.

123. *See infra* note 136 and accompanying text.

124. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964). "It is also evident that some aspects of international law touch much more sharply on national nerves than do others; the less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches." *Id.* In comparing the act of state doctrine to the political question doctrine, the court in *Machinists* noted that the act of state doctrine "requires that the courts defer to the legislative and executive branches when those branches are better equipped to resolve a politically sensitive question. Like the political question doctrine, its applicability is not subject to clear definition. The courts balance various factors to determine whether the doctrine should apply." 649 F.2d at 1358-59.

125. *See* Plaintiffs' Complaint, *supra* note 8, at 3. In addition, since each nation may only enter three contestants in each event, IOC CHARTER rule 37, the maximum number of American athletes who would benefit from the addition of two events is six. Indeed, the figure might be less, since some athletes may run in both events.

126. Rule 32 of the *Charter* gives the IOC authority to determine which events will be held. IOC CHARTER rule 32. *See also supra* notes 41-47 and accompanying text.

127. *See supra* notes 53-54 and accompanying text.

act that would prevent participation by United States athletes in the future.¹²⁸

The interest in hosting future international sports events may also be a consideration.¹²⁹ The United States Department of State believes that the IOC and similar sports organizations may shun the United States as a host rather than submit to its domestic laws.¹³⁰ In addition, even when the events are held outside the United States, the United States has an interest in ensuring free participation by all American athletes, including the plaintiffs in *Martin*.¹³¹ If United States courts assert jurisdiction over the IOC, other nations may be encouraged to interfere with sporting events held in their countries. While both of these fears are speculative, they are plausible and are entitled to serious consideration.

Despite these concerns, this case may be justiciable. The application of United States law could aid our foreign policy by demonstrating that the United States is committed to equality. In addition, adding two events may place only a slight burden on the IOC.¹³² Policy considerations do not prevent domestic courts from issuing orders against a sovereign that has chosen to take advantage of United States courts.¹³³ Accordingly, they should not prevent

128. *Id.*

129. See *supra* note 91 and accompanying text.

130. See *infra* note 136 and accompanying text.

131. 36 U.S.C. § 374(5). One of the purposes of the USOC is to "promote and support amateur athletic activities involving the United States and foreign nations." *Id.*

132. The plaintiffs assert that the events "could be added to the Olympic program schedule in a time period of around or about thirty days without injury to any of the defendants." Plaintiffs' Complaint, *supra* note 8, at 15. The defendants deny this. Defendants' Answer, *supra* note 26, at 9.

133. *Republic of France v. Standard Oil Co.*, 491 F. Supp. 161, 169 (N.D. Ill. 1979), *aff'd sub nom. In re Oil Spill by the "Amoco Cadiz" Off Coast of France*, 699 F.2d 909 (7th Cir. 1983). In *Republic of France*, the Republic of France filed a suit to recover damages from an oil spill. Noting the inequity of allowing France to sue in a United States court while disallowing counterclaims on the basis of the act of state doctrine, the court noted:

[T]o allow the Republic of France to litigate its claims in this country and to cloak itself with immunity, based on the act of state doctrine, as to counterclaims and third party claims, would be unjust. . . .

A judicially fashioned doctrine should not be applied to work an injustice, particularly where the application of the doctrine would not serve the interests it was fashioned to protect.

Id. at 169. Accordingly, the counterclaims against France were not dismissed. *Id.* In *Ghana Supply Comm'n v. New England Power Co.*, 83 F.R.D. 586 (D. Mass. 1979), when a

domestic courts from issuing orders against an international organization that is receiving substantial benefits from the United States.¹³⁴

Finally, it is not clear that the type of interference contemplated by the IOC Charter and by the United States government in its assurances to the IOC includes judicial intervention.¹³⁵ The Justice Department, in *Ren-Guey*, argued that United States assurances precluded such interference,¹³⁶ but this issue was not decided by the court.¹³⁷

Nonetheless, the balance of foreign policy considerations is against hearing the case. The embarrassment of inconsistent positions by two branches of the United States government, the disqualification of American athletes and the possibility that the United States would not be able to host the Olympics in the future are risks that exceed any possible benefit that the United States would derive from hearing the case.

2. Enforceability

In addition to foreign policy considerations, *Martin* may not be justiciable because the injunction that the plaintiffs seek may be ineffective.¹³⁸ An injunction against the IOC may be unenforceable

Ghanaian corporation instituted a civil action through a United States subsidiary, the latter was not allowed to claim the executive privilege of the nation of Ghana with respect to discovery orders. *Id.* at 594.

134. The IOC has selected an American site because it is suitable for the Games, *see supra* note 16, and has an American corporation, the LAOOC, financing and operating the Games in accordance with its rules. *See supra* notes 58-61 and accompanying text.

135. IOC CHARTER rule 24 refers to "pressures of any kind whatsoever." The United States has agreed to abide by IOC rules. *See supra* note 91 and accompanying text.

When the USOC, in response to President Carter's decision to boycott the 1980 Summer Olympics, decided not to send a team to the Games, the IOC ruled that the USOC did not violate rule 24 of the *IOC Charter*, *DeFrantz*, 492 F. Supp. at 1192 n.23. In *DeFrantz*, however, the USOC had no duty to send a team, *id.*, whereas, in *Martin*, the USOC and the LAOOC have undertaken the responsibility of operating the Games under the IOC's guidelines. *See supra* notes 47-61 and accompanying text.

136. Statement of Interest, *supra* note 91, at 3. "The United States believes that judicial intervention in the IOC's management of the games is inconsistent with the United States' commitment to observe the rules established by the IOC and calls into question the ability of the United States to host other international sporting events." *Id.*

137. *See supra* notes 110-13 and accompanying text.

138. A plaintiff must show that his injury "is likely to be redressed by a favorable decision." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976). In determining whether an injury is redressable, "the Court's inquiry necessarily proceeds to the point of

since only the IOC has the power to determine which events will be held,¹³⁹ and the IOC can ignore the order as it is outside the United States.¹⁴⁰ Even if Switzerland were inclined to recognize and enforce the United States judgment,¹⁴¹ the judgment may be rendered too late for Swiss action before the Games.¹⁴² Moreover, Switzerland may also be unable to enforce an injunction. If the IOC does not meet in Switzerland between the time the United States judgment is issued and the start of the Games,¹⁴³ a Swiss court cannot force the IOC to add these events.¹⁴⁴ In *Ren-Guey*, the injunction

deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." *Baker*, 369 U.S. at 198.

In *Dauids v. Akers*, 549 F.2d 120 (9th Cir. 1977), a state representative challenged the underrepresentation of his party on legislative committees. *Id.* at 122. The court stated that "we cannot discover a manageable standard for resolving the problem." *Id.* at 125. *Cf.* *Powell v. McCormack*, 395 U.S. 486 (1969). In *Powell*, a member of the House of Representatives who was denied a seat in Congress sought a declaratory judgment upholding his right to be seated. *Id.* at 489-93. The Court held that since the plaintiff sought only a declaratory judgment, not enforcement, the case was justiciable despite difficulties in compelling Congress to seat him. *Id.* at 517.

139. IOC CHARTER rule 32.

140. The IOC is headquartered in Switzerland. *Id.* rule 11.

141. Civil law nations, such as Switzerland, will generally recognize a judgment if there was a fair hearing by an independent and impartial court. A. EHRENZWEIG & E. JAYME, *PRIVATE INTERNATIONAL LAW* 79 n.23 (1973).

[T]here is not much danger that Swiss judgments will be denied recognition and enforcement in the United States on the ground of lack of reciprocity, or that this will happen to American judgments in Switzerland. Still, under Swiss as well as American law, recognition and enforcement of a foreign judgment may be denied on grounds other than lack of reciprocity. Thus lack of opportunity for the defendant to be heard in the foreign proceedings or incompatibility of the foreign decision with the public policy of the forum will bar the enforcement of an American judgment in Switzerland, just as they bar the enforcement of a Swiss judgment in this country.

A. NUSSBAUM, No. 1, *AMERICAN-SWISS PRIVATE INTERNATIONAL LAW* 54 (2d ed. 1958). Accordingly, a Swiss court may deny recognition if it determines that the American judgment is inconsistent with Swiss law, or there is a Swiss public policy in favor of giving the IOC freedom in choosing events.

142. The relief that the plaintiffs seek applies only to the 1984 Summer Olympics. Plaintiffs' Complaint, *supra* note 8, at 18-20. Therefore, if the litigation in the United States and the subsequent recognition and enforcement in Switzerland cannot be completed before the opening of the 1984 Games, the issue would become moot.

143. The IOC is not required to meet more than once a year, IOC CHARTER rule 17, and it may meet at any place fixed by the IOC. *Id.* Consequently, it will not necessarily meet in Switzerland between the final decision in *Martin* and the start of the Games.

144. The IOC's members include no more than two people from the same country, *id.* rule 12, so there is no country where a majority of them reside. The IOC needs a majority of its members to constitute a quorum. *Id.* rule 18. Since the IOC must approve the addition of events for them to be official, *id.* rule 32, it would be impossible for Switzerland, or any other

did not present these problems. The court simply ordered that the defendant be restrained from interfering with Taiwan's participation in the Games.¹⁴⁵

The court might order an injunction against only the USOC and the LAOOC, but the defendants assert that the IOC is solely responsible for decisions regarding the games.¹⁴⁶ The argument that the IOC retains sole authority to determine what events will be held was also used in *Ren-Guey*. In *Ren-Guey*, the Lake Placid Olympic Committee argued, inter alia, that the IOC¹⁴⁷ had the sole authority to decide whether Taiwanese athletes should be allowed to have their own flag, anthem and uniform.¹⁴⁸ The Lake Placid Olympic Committee had the same role that the LAOOC has now; it contracted with the IOC to operate the Games in accordance with the IOC's rules.¹⁴⁹ In *Ren-Guey*, the issue of whether the Lake Placid Olympic Committee had any control over the matter was never reached.¹⁵⁰

An injunction against the USOC and the LAOOC, although enforceable,¹⁵¹ creates several problems. Scheduling the track events would interfere with the contract between the IOC, USOC and LAOOC.¹⁵² Such interference might subject the USOC and

country, to compel the addition of Olympic events without the IOC members convening there.

145. The court ordered "that the defendant be enjoined from doing or failing to do any act which would make it impossible for the plaintiff to participate in the 1980 Lake Placid Winter Olympics and to enjoy the same privileges as are extended to all athletes from all nations." *Liang Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, No. 50-80, slip. op. at 9 (Essex County Ct. Feb. 7, 1980), *rev'd*, 72 A.D.2d 439, 424 N.Y.S.2d 535, *aff'd*, 49 N.Y.2d 771, 403 N.E.2d 178, 426 N.Y.S.2d 473 (1980).

146. Defendants' Answer, *supra* note 26, at 13.

147. The IOC was not a defendant in *Ren-Guey*. The sole defendant was the Lake Placid 1980 Olympic Games, Inc. *Ren-Guey*, 49 N.Y.2d at 771, 403 N.E.2d at 178, 426 N.Y.S.2d at 473.

148. *Ren-Guey*, No. 50-80, slip op. at 1-2. The trial court noted that the defendant agreed to conduct the games "pursuant to rules established by the International Olympic Committee." *Id.* at 2. It also noted that "the defendant takes the position that it is powerless to do anything other than to follow the orders of the International Olympic Committee." *Id.* at 3.

149. *Id.* at 1-2.

150. The decision was reversed on the grounds that the recognition of Taiwan presented a political question. *See supra* note 113.

151. Since the USOC is based in Colorado, *see supra* note 15, and the LAOOC is based in California, *see supra* note 16, there would not be a problem obtaining recognition from the court of a foreign country. *Cf. supra* notes 141-44 and accompanying text.

152. *See supra* note 60 and accompanying text.

American athletes to some type of disciplinary action.¹⁵³ In addition, the events may not be recognized by the IOC, hence medals might not be awarded.¹⁵⁴ In either case, an injunction may be undesirable.

CONCLUSION

The IOC has the legal capacity, under international law, to be sued.¹⁵⁵ It is not immune from suit under the IOIA,¹⁵⁶ and it is not necessarily precluded from suit by the President's assurances.¹⁵⁷ In addition, the issues in *Martin*, despite their novelty, do not present a political question.¹⁵⁸ The substantive and procedural aspects of this case are appropriate for adjudication.¹⁵⁹

Policy considerations, however, compel restraint. The United States interest in hearing this case must be considered in light of the difficulty of enforcing injunctive relief,¹⁶⁰ and the fact that doing so may interfere with our foreign policy and hinder our participation in international athletics.¹⁶¹ While an appropriate case—for example, a suit requesting an injunction restraining the IOC from an activity—may be justiciable, the suit in *Martin v. International Olympic Committee*¹⁶² is not justiciable.¹⁶³

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153. See *supra* note 53 and accompanying text.

154. In addition, if events that the IOC does not recognize are held, the LAOOC would violate rule 55 of the *IOC Charter*. This rule prohibits holding other international sports events in the Olympic city during the Games. *Id.*

155. See *supra* notes 62-85 and accompanying text.

156. See *supra* notes 86-90 and accompanying text.

157. See *supra* notes 91-106 and accompanying text.

158. See *supra* notes 107-18 and accompanying text.

159. See *supra* notes 109-18 and accompanying text.

160. See *supra* notes 138-54 and accompanying text.

161. See *supra* notes 119-37 and accompanying text.

162. *Martin v. International Olympic Comm.*, No. 83-5847 (C.D. Cal. filed Sept. 9, 1983).

163. After this Note went to press, the District Court denied a preliminary injunction. *Martin v. International Olympic Committee*, No. 83-5847, slip. op. at 38 (C.D. Cal. Apr. 16, 1984). The court, noting that a preliminary injunction "must never be granted except in a case clearly warranting such action," *id.* at 14, found that the evidence presented so far has "not shown sufficiently that these defendants have violated the standards set forth in these laws." *Id.* at 38. The court did not discuss either the amenability of the IOC to suit or the political question issues discussed in this Note. The plaintiffs plan an immediate appeal. *Chariots of Litigation*, *TIME*, Apr. 30, 1984, at 80. In addition, new lawsuits are pending against the IOC regarding the eligibility of athletes, *id.* at 80-81, thus increasing the judicial interference with the Olympic Games and the importance of the issues presented in this Note.